

## REMARKS

Claims 1-20 are pending in this application. By this Amendment, claims are amended. No new matter is added.

### Interview

Applicant thanks the Examiner for the courtesies extended during a March 9, 2004, interview with, in person, Applicant's undersigned representative and, via telephone, with Applicant. During the interview, the outstanding rejections of record were discussed. Applicant's separate record of the interview is contained in the remarks that follow.

### Section 112, Second Paragraph, Rejection

The Office Action rejects claims 1-8 under 35 U.S.C. 112, second paragraph, for containing asserted informalities. The Office Action asserts that claim 1 recites the limitation "the selected non-commodity item." However, Applicant amended claim 1 in his October 16, 2003, Amendment such that the terminology "a selected non-commodity item" is used. Thus, Applicant believes that this rejection was previously rendered moot. If for some reason the Examiner disagrees, the Examiner is requested to telephone Applicant's undersigned representative so that this issue can be resolved. In any case, reconsideration and withdrawal of the rejection of claim 1-8 under 35 U.S.C. 112, second paragraph, are respectfully requested.

### **Section 103 Rejection**

The Office Action rejects claims 1-8 and 13-20 under 35 U.S.C. 103(a) as being obvious over Katz et al. (U.S. Patent No. 5,224,034) in view of Vandivier, III (U.S. Patent No. 5,033,004). This rejection is traversed.

The presently claimed invention (claims 1-8) is directed to a method by which a non-commodity material or item can be bought and sold over a computer network. The present claims 1-8 require, *inter alia*:

a) that “**a plurality of sellers** each [provide] to the network physical and chemical and/or electrical characteristics via at least one computer of a quantity of the non-commodity available for sale and a cost of the available non-commodity...” (claim 1, emphasis added).

In Katz, a plurality of sellers do not provide such information via computer to the network. Additionally, in Katz, a quantity available of a non-commodity is never provided to a network. Instead, in Katz, only “the purchaser [enters and stores] information relating to the product price and discount information provided by the vendors of the products” (see Katz column 3, lines 2-5).

As is the case for Katz, in Vandivier III, a plurality of sellers do not provide such information via computer to the network. Instead, in Vandivier III, a single enters information (see items 900-904 in Fig. 2A).

Thus, as neither Vandivier III nor Katz et al. disclose that a plurality of sellers do not provide such information via computer to the network, as required by the present claims, the present claims would not have been obvious over the combination of Vandivier III and Katz et al. for at least this reason.

b) a step of "estimating the cost of operating the process or producing goods from the process for at least some of the different non-commodities from the database of different non-commodities in the performance model to make a comparison of the at least some of the different non-commodities to determine which, if any, of the at least some of the different non-commodities are within the maximum process cost"

In Katz et al., no desired maximum process cost is ever considered. Katz et al. only determine a single optimal solution "without calculating the actual cost of non-optimal solutions" (Katz et al. column 2, lines 63-64). Thus, Katz et al. never determines "which, if any, ...non-commodities are within the maximum process cost," as is required by the present claims.

In Vandivier III, as is the case for Katz et al., no maximum process cost is ever considered. Vandivier III only relates to the production of "optimized blended batches of coal" (see line 1 of the Abstract).

Thus, as neither Vandivier III nor Katz et al. "make a comparison of the at least some of the different non-commodities to determine which, if any, of the at least some of the different non-commodities are within the maximum process cost", as required by the present claims, the present claims would not have been obvious over the combination of Vandivier III and Katz et al. for at least this additional reason.

c) "providing the buyer with a list of non-commodities that when used as input for the process are within the desired maximum process production or operating cost, or provide certain operating characteristics"

As discussed on page 26 of the present specification, a unique and desirable of the presently claimed invention is the ability to present to the non-commodities buyer a

cost versus risk tradeoff, thus distilling the non-commodities purchase decision to the same criteria used in any investment that involves a future and uncertain payoff. For example, in the example on page 26 of the specification, the least production cost is associated with the highest technical risk, and the highest production cost associated with the least technical risk. The value of the present invention is to present to the non-commodities buyer a comparison of the production cost versus risk tradeoff that he or she confronts in the marketplace, not just the price of the non-commodities.

In Katz et al., as discussed above, no desired maximum process cost is ever considered. Katz et al. only determine a single optimal solution “without calculating the actual cost of non-optimal solutions” (Katz et al. column 2, lines 63-64). Thus, Katz et al. never determines which, if any, ...non-commodities are within the maximum process cost, and thus could never list those non-commodities that are within the maximum process cost, as is required by the present claims.

In Vandivier III, as is the case for Katz et al., no maximum process cost is ever considered. Vandivier III only relates to the production of “optimized blended batches of coal” (see line 1 of the Abstract).

Thus, as neither Vandivier III nor Katz et al. “make a comparison of the at least some of the different non-commodities to determine which, if any, of the at least some of the different non-commodities are within the maximum process cost”, as required by the present claims, the present claims would not have been obvious over the combination of Vandivier III and Katz et al. for at least this additional reason.

d) a step of “utilizing a database and standard datamining techniques to record performance of the process with a selected non-commodity item, and applying this information in the formulation of a request-for-proposal for future purchases of non-commodity materials or items”

In both Katz et al. and Vandivier III, no step of applying information in the formulation of a request-for-proposal for future purchases of non-commodity materials or items is ever considered. Thus, as this required element of the present claims if missing, the present claims would not have been obvious over the combination of Vandivier III and Katz et al. for at least this additional reason.

d) Similarly regarding claims 13-20, a step of “the buyer ...providing a desired maximum power generation cost” (see claim 13) is required.

In Katz et al., no maximum power generation cost is ever considered. Katz et al. only determine a single optimal solution “without calculating the actual cost of non-optimal solutions” (Katz et al. column 2, lines 63-64). Thus, Katz et al. never determines “which, if any, ...non-commodities are within the maximum process cost,” as is required by the present claims.

In Vandivier III, as is the case for Katz et al., no maximum power generation cost is ever considered. Vandivier III only relates to the production of “optimized blended batches of coal” (see line 1 of the Abstract)

Thus, as neither Vandivier III nor Katz et al. teach or suggest a step of a buyer “providing a desired maximum power generation cost”, as required by the present claims 13-20, the present claims would not have been obvious over the combination of Vandivier III and Katz et al. for at least this additional reason.

Applicant takes this opportunity to address several issues raised in the Office Action. The Office Action asserts that "the cost of the products roughly estimates the cost of operating a process of producing goods when the product purchased makes up the majority of the cost to produce, such as in the power generation business" (see lines 2-5 on page 4 of the Office Action). However, as was discussed during the March 9, 2004, interview, as those of skill in the art readily know, this assertion is incorrect. The least expensive coal does not necessarily lead to the least expensive process of producing electricity due to a variety of other factors in the process.

The performance simulation model required in the method of the present claims addresses such factors to determine a list of coals (or other non-commodities) that meet the buyers needs, not just the single "optimal" commodities that would be achieved by combining the teachings of Katz et al. and Vanivier, III.

Thus, for at least the above reasons, reconsideration and withdrawal of the rejections of claims 1-8 and 13-20 under 35 U.S.C. § 103(a) are respectfully requested.

Applicant respectfully submits that this application is in condition for allowance and such action is earnestly solicited. If the Examiner believes that anything further is desirable in order to place this application in even better condition for allowance, the Examiner is invited to contact Applicant's undersigned representative at the telephone number listed below to schedule a personal or telephone interview to discuss any remaining issues.

Please charge any fee deficiency or credit any overpayment to Deposit Account  
No. 01-2300, referencing attorney docket number 023407-00000.

Respectfully submitted,

  
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